



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,647	02/20/2004	George Mulcaire-Jones	50221-00002	7353

25231 7590 06/20/2007
MARSH, FISCHMANN & BREYFOGLE LLP
3151 SOUTH VAUGHN WAY
SUITE 411
AURORA, CO 80014

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT	PAPER NUMBER
----------	--------------

3736

MAIL DATE	DELIVERY MODE
-----------	---------------

06/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/783,647

Applicant(s)

MULCAIRE-JONES, GEORGE

Examiner

Jeffrey G. Hoekstra

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed on 03/19/2007 and 04/18/2007 have been entered.

Notice of Amendment

2. In response to the amendment filed on 04/18/2007, amended claim(s) 13, 16, 17, 21, 25, and 27 is/are acknowledged. The current rejections of the claim(s) 13-31 is/are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 13-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Jennings et al (US 6,747,917 B2).

5. Jennings et al discloses a menstrual cycle monitoring apparatus (as best seen in Figures 1-2), comprising:

- a string (100);
- a plurality of beads (102,104,106,108,110) removably positionable on said string (column 6 lines 52-57), including up to 32 indicators or bead types having varying

Art Unit: 3736

colors, shapes, sizes, and indicia (column 2 line 28 – column 3 line 21, and column 7 line 52- column 8 line 9); and

- an ovulation prediction kit (column 1 line 39 – column 2 line 9).

Response to Arguments

6. Applicant's arguments filed 04/18/2007 have been fully considered but they are not persuasive. Applicant argues the 102(e) rejection of claims 13-31 under Jennings et al, specifically arguing Jennings does not disclose, teach, or fairly suggest (a) an apparatus having up to ten different bead types positionable on and removable from a string and (b) the apparatus wherein the first bead indicates a first menses day, the second beads indicate additional menses phase days, the third bead indicates a crossing over from the menses phase to the fertile phase, the fourth beads indicate additional fertile phase days, the fifth bead indicates when the woman's cervical mucus begins drying, the sixth beads indicate additional days on which the woman's cervical mucus is drying, the seventh bead indicates the first infertile phase day, and the eighth beads indicate additional infertile phase days.

7. In response to applicant's argument that (a) and (b), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

8. In this case for (a), Jennings discloses an apparatus comprising 32 different beads strung on a string (column 6 lines 52-56, column 7 lines 53-55, and as set forth

Art Unit: 3736

above) and securing them with a knot or fastener, wherein the beads are capable of being removed by undoing the knot or fastener and sliding them off the string.

9. In this case for (b), Jennings discloses an apparatus comprising 32 different beads strung on a string (column 6 lines 52-56, column 7 lines 53-55, and as set forth above), wherein each different bead and/or groups of beads are capable of representing and providing a daily visual indication relating to various phases of a woman's menstrual cycle and/or representing and providing a daily visual indication relating to various cyclical physiological characteristics.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3736

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.H./

Jeff Hoekstra

Examiner, Art Unit 3736



M. H. LINDENBURG
PATENT EXAMINER
EBC/CENTER 3700